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December 19, 2011

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EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Sandwich Isles Communications, Inc., Petition for Declaratory
Ruling, WC Docket No. 09-133

Dear Ms. Dortch:

On December 15, 2011, Regina McNeil and Jeffrey Dupree of National Exchange Carrier Association, Inc. ("NECA"), and I met separately with Lisa Hone, Wireline Advisor to Commissioner Copps, and Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn, to discuss matters in the above-captioned docket. In addition, on that same day I spoke with Angela Giancarlo, Chief of Staff & Senior Legal Advisor to Commissioner McDowell, about the same issues.

In these meetings, NECA indicated that the Bureau has now issued a Declaratory Ruling as to the proper amount of costs that should be included in the NECA pool concerning Sandwich Isles, Co. ("SIC"), costs associated with its submarine cable and related network investment. It is this Bureau ruling that is the decisional document, not any cost guidelines or other decisions reached by NECA. NECA is bound to follow Commission rules and guidance.

With respect to the argument contained in SIC's petition for reconsideration, that NECA failed to follow its Spare Fiber Guidelines, NECA stated that a "used and useful" analysis, which is one of the legal analyses required of a regulatory body in a rate of return environment, must be applied prior to deciding the proper cost accounting guidelines to follow, including the Spare Fiber Guidelines.

With respect to SIC's argument made in its November 30 ex parte letter, i.e., NECA did not follow Section 9 of its Cost Issues Manual regarding the evaluation of Type 1 and Type 2 cost issues, NECA stated that it did follow its procedures. A cost issue raised by an individual company like SIC was not appropriate for the processes outlined in the cited material because of the confidentiality concerns for SIC data. The issues associated with the SIC submarine and related network investment were not particularly complicated in any event, but simply required the application of the Commission's "used and useful" doctrine, and did not involve an

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interpretation of unclear accounting guidelines. Although reasonable minds can differ with respect to the application of the “used and useful” doctrine, NECA and SIC sought informal advice from Commission staff on this issue prior to implementation of NECA’s allowance of only a portion of these costs in the NECA pool. The Bureau ultimately concluded that NECA had made the correct decision. However, the Bureau used the Commission’s equitable discretion, something only it could lawfully do, to require 50 percent of the disputed costs to be included in the NECA pool. Bringing disputes between individual member companies and NECA to the Commission’s attention through the vehicle of a declaratory ruling was the procedure that the FCC has always indicated was appropriate in these circumstances.

In its ex parte letter, SIC also implied that NECA was not following the Bureau order when it recently told SIC that the \$2 million in revenues SIC received from Time Warner Cable for the use of SIC’s undersea cable and related network would be excluded from future pool payments. This cost accounting methodology was specifically required in the Bureau Declaratory Ruling because the revenues constituted unregulated use of the network, and should not be included in the NECA pool regulated revenue requirement.

As the Bureau concluded in its Declaratory Ruling, NECA had told SIC that it was questionable whether the entire disputed investment would be approved, but SIC nonetheless went ahead with the construction without receiving a commitment that the entire investment would be included in the NECA pool. Since the investment was primarily for the provision of broadband services to SIC customers, future CAF support may be an available potential source of funding for SIC’s submarine cable and associated terrestrial network over and above what is included in the NECA pool.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket. Please let me know if you have further questions.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for National Exchange Carrier Association, Inc.

cc: Lisa Hone
Angela Kronenberg
Angela Giancarlo